

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

### PART 1334—MAJOR SYSTEM ACQUISITION

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AUTHORITY: 41 U.S.C. 414; 48 CFR 1.301-1.304.

SOURCE: 75 FR 10570, Mar. 8, 2010, unless otherwise noted.

#### Subpart 1334.0—General

##### 1334.003 Responsibilities.

(a) The designee authorized to carry out the responsibilities described under FAR 34.003 is set forth in CAM 1301.70.

(b) Agency procedures related to major system acquisitions are set forth in DAO 208-3.

##### 1334.005 General requirements.

##### 1334.005-6 Full production.

The designee authorized to reaffirm mission need and program objectives and grant approval to proceed with the award of a contract for full production of a successfully tested major system is set forth in CAM 1301.70.

#### Subpart 1334.2—Earned Value Management System

##### 1334.201 Policy.

##### 1334.201-70 Policy.

(a) In accordance with the Department's Information Technology Investment Performance Measurement and Performance Reporting Policy, the use of an Earned Value Management System (EVMS) is required for major acquisitions for information technology development in which the development/modernization/enhancement costs are anticipated to equal or exceed \$25 mil-

lion over the life of the acquisition. The Chief Information Officer may require EVMS on other acquisitions if the project merits special attention due to sensitivity, mission criticality, or risk potential.

(b) If a project manager considers the use of an EVMS to be necessary for a major acquisition that does not meet the \$25 million threshold, the project manager should conduct a cost/benefit analysis and consult with the OCIO on the advisability of requiring an EVMS.

(c) Project managers, contracting officers, and contracting officer representatives responsible for major acquisitions requiring an EVMS must successfully complete an Earned Value Management course that meets the requirements of the OCIO.

(d) The use of firm-fixed-price type contracts, subcontracts and other agreements are generally not suited to developmental efforts and the use of an EVMS is of limited utility under such arrangements. In the rare cases where a fixed-price type contract is contemplated for a developmental effort, the project manager and contracting officer must consult with the OCIO for guidance to determine whether an EVMS will be required.

(e) The use of an EVMS is generally discouraged for contracts, subcontracts, and other agreements where the period of performance is less than 12 months in duration. Additionally, application of an EVMS to work efforts that are not discrete in nature should be considered on a case-by-case basis.

(f) In cases where the nature of the work does not lend itself to the meaningful use of an EVMS, the OCIO may waive the EVMS requirement if appropriate.

##### 1334.202 Integrated baseline reviews.

An Integrated Baseline Review shall be conducted when an Earned Value Management System is required.

### PART 1335—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

1335.001 Definitions.

## 1335.001

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AUTHORITY: 41 U.S.C. 414; 48 CFR 1.301–1.304.

SOURCE: 75 FR 10570, Mar. 8, 2010, unless otherwise noted.

### 1335.001 Definitions.

*Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains:

- (1) Data through intervention or interaction with the individual, or
- (2) Identifiable private information.

*Intervention* includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (*i.e.*, the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

*Research* means a systematic investigation, including research, development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

## 48 CFR Ch. 13 (10–1–12 Edition)

### 1335.006 Contracting methods and contract type.

(a) Insert provision 1352.235–70, *Protection of Human Subjects*, in all solicitations where research services under the contract might involve the use of human subjects. The provision is mandatory where human subjects may be used in performance of the award and may not be modified without consultation with Program Counsel.

(b) Insert clause 1352.235–71, *Protection of Human Subjects—Exemption*, in all contracts where the agency has determined based on documentation submitted by the offeror in response to provision 1352.235–70, *Protection of Human Subjects*, that the research involving human subjects is exempt from the requirements of 15 CFR part 27 and does not require Institutional Review Board (IRB) review. The provision is mandatory where an appropriate agency official has determined that the research involving human subjects to be carried out in performance of the award is exempt from 15 CFR part 27, and may not be modified without consultation with Program Counsel.

(c) Insert clause 1352.235–72, *Protection of Human Subjects—Institutional Approval*, in all contracts where the agency has determined based on documentation submitted by the offeror in response to provision 1352.235–70, *Protection of Human Subjects*, that the research involving human subjects is not exempt from the requirements of 15 CFR part 27 and requires review by a cognizant Institutional Review Board (IRB). The provision is mandatory where an appropriate Agency official has determined that the research involving human subjects to be carried out in performance of the award is not exempt from 15 CFR part 27 and requires review by a cognizant IRB, and may not be modified without consultation with Program Counsel.

(d) Insert clause 1352.235–73, *Protection of Human Subjects—After Initial Contract Award*, in all contracts where at the time of award no research involving human subjects is anticipated, but where decisions made in the course of the research may necessitate the addition of research involving human subjects to the work performed. The provision is mandatory where it is possible

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that the use of human subjects may be required in performance of the award but is not anticipated at the time of award, and may not be modified without consultation with Program Counsel.

### **1335.014 Government property and title.**

The designee authorized to determine that the policies in FAR 35.014(b)(1)–(4) will not apply regarding title to equipment purchased by nonprofit institutions of higher learning and nonprofit organizations whose primary purpose is the conduct of scientific research is set forth in CAM 1301.70.

### **1335.016 Broad agency announcement.**

#### **1335.016-70 DOC procedures for the use of broad agency announcements.**

Procedures for the use of broad agency announcements within the Department of Commerce are set forth in CAM 1335.016.

### **1335.017 Federal funded research and development centers.**

#### **1335.017-2 Establishing or changing an FFRDC.**

The designee authorized to approve the establishment of an FFRDC, or change its basic purpose and mission, is set forth in CAM 1301.70.

#### **1335.017-4 Reviewing FFRDCs.**

The designee authorized to approve the continuation or termination of the sponsorship of an FFRDC is set forth in CAM 1301.70.

## **PART 1336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

### **Subpart 1336.2—Special Aspects of Contract for Construction**

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1336.203 Government estimate of construction costs.

1336.270 Special requirements for ship construction.

### **Subpart 1336.6—Architect-Engineer Services**

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1336.602-4 Selection authority.

1336.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

1336.605 Government cost estimate for architect-engineer work.

1336.609 Contract clauses.

1336.609-1 Design within funding limitations.

AUTHORITY: 41 U.S.C. 414; 48 CFR 1.301–1.304.

SOURCE: 75 FR 10570, Mar. 8, 2010, unless otherwise noted.

## **Subpart 1336.2—Special Aspects of Contracting for Construction**

### **1336.203 Government estimate of construction costs.**

After award, the independent Government estimated price can be released, upon request, to those firms or individuals who submitted proposals.

### **1336.270 Special requirements for ship construction**

See 48 CFR 1371 for special requirements for acquisition involving ship construction and ship repair.

## **Subpart 1336.6—Architect-Engineer Services**

### **1336.602 Selection of firms for architect-engineer contracts.**

#### **1336.602-2 Evaluation boards.**

Permanent and *ad hoc* architect-engineer evaluation boards may include preselection boards. When necessary, members of permanent, *ad hoc*, and preselection boards may be appointed from private practitioners of architecture, engineering, or related professions. Private practitioners may be appointed as deemed necessary by the BPO or higher agency official. The permanent and *ad hoc* evaluation boards should be comprised of at least a majority of government personnel.

#### **1336.602-4 Selection authority.**

Each contracting office shall designate the selection authority based on the complexity of each procurement.